

### **REMARKS**

Claims 1-18 are pending in the present application. Claims 1, 7 and 13, were amended in this response to improve form. No new matter was introduced as a result of the amendments. Support for the amendments may be found, for example, on page 23, lines 8-14 of the specification and FIG. 7 (see step SA 5). Entry of the amendments and favorable reconsideration are earnestly requested.

Claims 1-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Shinomiya* (US Pub. 2002/0138645) in view of *Fujii et al.*, "Management of WDM Self-Healing Networks." Applicants respectfully traverse these rejections.

Claims 1 and 13, as amended, recite that "selecting a first network node based on the failure notification time, out of the network nodes that are positioned in the current communication path on upper stream from the location of the network failure." Claim 7, as amended, recites that "a node selecting unit ... selects a first network node based on the failure notification time, out of the network nodes that are positioned in the current communication path on upper stream from the location of the network failure."

The Examiner contends that the first network node is "chooser node" and *Fujii* discloses the above feature of claims 1, 7 and 13 on page 1030, section 3.4.1 and in Figure 3. However, *Fujii* merely discloses therein that the node that starts the restoration process is called sender node, whereas the destination node for establishing the alternate path is called chooser node, and chooser candidate nodes are adjacent node and the node after the adjacent node for each path.

*Fujii* fails to disclose that "selecting a first network node based on the failure notification time, out of the network nodes that are positioned in the current communication path on upper stream from the location of the network failure," and "a node selecting unit ... selects a first network node based on the failure notification time, out of the network nodes that are positioned in the current communication path on upper stream from the location of the network failure," as recited in claims 1,7, and 13.

Also, as the Office Action has conceded, *Shinomiya* fails to disclose the above feature of the present invention (see Office Action, page 6). Furthermore, even though one were to combine the disclosure of these cited references, the resulting combination would not disclose the feature of the present invention.

Therefore, it is respectfully submitted that claims 1, 7 and 13 are patentable over *Shinomiya* in view of *Fujii*.

Claims 2-6 depend from claim 1, and these dependent claims include all of the features of independent claim 1 plus additional features, which are not disclosed by *Shinomiya* and *Fujii*.

Claims 8-12 depend from claim 7, and these dependent claims include all of the features of independent claim 1 plus additional features, which are not disclosed by *Shinomiya* and *Fujii*.

Claims 14-18 depend from claim 13, and these dependent claims include all of the features of independent claim 1 plus additional features, which are not disclosed by *Shinomiya* and *Fujii*. Therefore, it is respectfully submitted that claims 2-6, 8-12 and 14-18 are also patentable over *Shinomiya* in view of *Fujii*.

In view of the remarks and amendments set forth above, this application is in condition for allowance which action is respectfully requested. If any fees are due in connection with this application as a whole, the Examiner is authorized to deduct such fees from deposit account no. 50-1290. If such a deduction is made, please indicate the attorney docket number FUSKA 20.991 (100808-00055) on the account statement.

Respectfully submitted,

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